

TRACY L. BLAIR )  
 Claimant )  
 VS. )  
 ) Docket No. 237,778  
 FANTASTIC SAM'S )  
 Respondent )  
 AND )  
 )  
 FIRST NATIONAL INSURANCE CO. OF AMERICA )  
 Insurance Carrier )

Claimant began working for respondent as a cosmetologist in July 1995. The duties included extensive hand work using clippers, edgers, scissors, thinning shears, combs, and brushes. She began noticing problems in her hands and arms in March 1997. She initially sought treatment from the VA hospital and then through health insurance saw Dr. Roberta L. Loeffler. Dr. Loeffler referred claimant to Dr. Francis J. Cullen, a hand surgeon. Dr. Cullen's records of September 8, 1997, contain a history which associates

the symptoms, symptoms Dr. Cullen considers to be carpal tunnel symptoms, with claimant's work activities. The record gives the following history:

The patient is a 28-year-old right-handed female who works as a hairdresser for Fantastic Sam's who claims to have bilateral carpal tunnel syndrome with the right worse than the left. She says that she performs numerous hair perms throughout the day. Eventually, both hands will go asleep when she is in the middle of doing a long work day. She also notes that she has a lump at the base of the right thumb which she wishes to be addressed.

After examination and testing, Dr. Cullen diagnosed ganglion cyst on the back of the right thumb and bilateral carpal tunnel, more severe on the right than the left. He performed surgery on the right on September 23, 1997. The surgery consisted of a decompression of the median nerve on the right and removal of the cyst.

Claimant was off work for five weeks after the surgery and then returned to work for respondent without restrictions. According to claimant, her right hand was greatly improved but her left hand started to get worse. On September 30, 1998, claimant had carpal tunnel surgery for the left upper extremity.

Respondent first contends claimant has not met her burden of proving the carpal tunnel syndrome arose out of and in the course of her employment. Respondent emphasizes that the record contains no medical opinion as to the cause of the carpal tunnel syndrome. The Board agrees that a medical opinion would be required in some cases to establish the prima facie case. But under the circumstances presented here, the Board agrees with the finding of the ALJ. The Board finds the nature of the work and the association of the symptoms with that work establish, even if by a slim margin, that the work probably or most likely caused or contributed to the carpal tunnel syndrome.

Respondent next contends claimant failed to give notice of the accident within the time limits required by K.S.A. 44-520. The ALJ found respondent had notice of the second injury. Claimant testified that she told her supervisor she was having tingling and numbness in her hands, told her she thought it might be carpal tunnel syndrome, and told her she thought it was related to her work. Although the date of this notice is not specifically stated, the record leaves the impression claimant notified respondent of this in March 1997 when the symptoms first began. Regardless of the exact date, it does appear it occurred, if claimant's testimony is believed, before the second surgery. By that time, claimant knew she had carpal tunnel syndrome.

Claimant's supervisor testified claimant told her about the cyst but not the carpal tunnel syndrome. She denied any knowledge of the carpal tunnel until she received correspondence from claimant's counsel more than ten days after claimant's second surgery.

The Board generally defers to the ALJ's evaluation of the credibility of witnesses who appear before the ALJ. In this case, the ALJ apparently accepted the testimony by the claimant. On that basis, the Board agrees with and affirms the conclusion by the ALJ that respondent had notice of the second injury.

The ALJ found the date of accident to be September 1998 when claimant was taken off work before the second surgery. Claimant suggests the date should be different. The Board concludes this question is not a jurisdictional issue subject to review in an appeal from a preliminary hearing.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge John D. Clark on December 17, 1998, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1999.

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BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS  
William L. Townsley, III, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director